Copies of claims 11 and 12 showing the changes made to the claims are attached.

REMARKS

Claims 1 through 19 are in the application as filed.

Claims 1-3, 8, 9 and 13-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bardy and Shimadzu.

Claims 4, 7, and 19 stand rejected under 35 U.S.C. 103(a) as obvious over Bardy in view of Basso et al.

Claims 10-12 stand rejected under 35 U.S.C. 103(a) as obvious over Bardy in view of Sugimoto.

Claims 11 and 12 are amended to correct obvious errors.

The Examiner is thanked for the thoroughness of the examination. However, it is respectfully submitted that the Examiner has misread the teachings of the Bardy reference. The Examiner states that Bardy teaches a method of providing medical testing comprising: "providing a central serving apparatus coupled to the Internet (fig. 1, part 16) that has access to test measurement software (col. 9, lines 19-24 & lines 37-43) and program algorithms (fig. 3, part 53), downloading measurement software by the Internet to the patient apparatus (fig. 7, part 97)"

At no place in Bardy is there a disclosure, teaching or suggestion that the server 16 has access to test measurement software that is downloaded to the patient apparatus. The passages cited by the Examiner make it clear that Bardy does not teach the downloading of such software to the patient apparatus. Although col. 9, lines 19-24 states that server system 16 includes software modules, there is not even a suggestion that the software modules are downloadable. To the contrary, col. 9, lines 27-36 state: "There are three basic software modules, **which functionally define the primary operations performed by the server system 16:** database module 51, analysis module 53, and feedback module 55. **In the described embodiment, these modules are executed in a distributed computing environment, although a single server or a cluster of servers could also perform the functionality of the modules.**"

At col. 9 lines 37-43, the collection of **measurement data received from a patient** is organized and stored in a database. **There is no teaching or suggestion that test measurement software of any kind is downloaded to the patient apparatus.** The only program code that is downloaded is not test measurement software, but rather it is code for reprogramming implantable medical devices as indicated at col. 10, lines 19-23; col. 14, lines 29-33; col. 14, liens 65-67.

Claim 1 recites, inter alia, "providing central serving apparatus coupled to the Internet, said central serving apparatus having access to medical test measurement software and computer program algorithms for processing medical test measurement data; downloading medical test measurement software, via the Internet, to patient Internet apparatus, said medical test

measurement software providing sensor placement information to a patient, said medical test

software further providing diagnostic testing operation and operability of said sensors...."

In contrast, Bardy does not teach or disclose the downloading of medical test measurement

software via the Internet to patient Internet apparatus. Bardy is absolutely silent on sensor

placement information, and, in particular, teaches medical apparatus that is implantable. It is not

conceivable that patients will implant medical devices. For this reason alone, it is not likely that

"medical test measurement software providing sensor placement information to a patient" is

included in any downloads to patients in the system of Bardy.

Still further, claim 1 also recites, inter alia, that the downloaded software "further providing

diagnostic testing operation and operability of said sensors." **Bardy is absolutely silent on**

providing diagnostic testing of any kind, in general, and of diagnostic testing operation and

operability of sensors.

Accordingly, Bardy does not show, teach or suggest downloading medical test measurement

software providing sensor placement information or diagnostic testing operation and operability

of sensors.

The Examiner mistakenly states that Bardy teaches placing sensors on the patient and points to

fig. 1, part 12 as showing same. It is respectively submitted that Bardy does not so teach. As

pointed out at col. 6, lines 61-64, **part 12 is an implantable medical device, not a sensor that**

is placeable on a patient.

Accordingly, for this additional reason, claim 1 is not shown, taught or made obvious by Bardy.

Claim 2-19 all depend from claim 1 and for the same reasons that claim 1 is not shown, taught or made obvious by Bardy, claims 2-19 are not shown, taught or made obvious by Bardy.

Although, the Examiner correctly notes that Bardy fails to teach providing sensor placement information to the patient by multimedia. However, as pointed out above, Bardy also fails to teach downloading software that is utilized to define patient sensor placement.

The Examiner attempts to fill the voids in the teachings of Bardy et al with Shimadzu. The Examiner takes the position that it would be obvious to one skilled in the art to "modify Bardy, to provide measuring apparatus user information to the patient by multimedia, as taught by Shimadzu."

Claim 1 does not include any multimedia element and accordingly, Claim 1 as modified by Shimadzu does not show, teach or make obvious Applicant's claimed invention.

Claim 16, recites, inter alia, "said test measurement software includes a multimedia presentation **that steps a patient through positioning and attachment of at least one sensor**."

Even though Shimadzu teaches use of multimedia to provide an instruction manual, Shimadzu

does not speak to any medical application, **nor does Shimadzu disclose, show or teach stepping**

"a patient through positioning and attachment of at least one sensor." Even if Shimadzu did

so teach, Bardy is silent on positioning of sensors. The medical devices disclosed in Bardy, are

implanted and are not subject to patient positioning and attachment.

Accordingly, neither claim 1 nor claim 16 is shown, taught or made obvious by the Bardy and

Shimadzu references taken singly or in combination.

Claim 17 depends from claim 16 and for the same reasons that claims 1 and 16 are not shown,

taught, or made obvious by Bardy and Shimadzu, claim 17 is likewise not shown, taught or made

obvious by the references.

In addition, claim 17, recites, inter alia, "said test measurement software responds to said

diagnostic testing indicating improper sensor operation by directing the patient through a

corrective routine." **Neither Bardy nor Shimadzu speaks to "improper sensor operation" or**

to "directing the patient through a corrective routine."

Accordingly, for this additional reason, claim 17 is not shown, taught or made obvious by Bardy

and Shimadzu taken singly or in combination.

Claims 8 and 13 each depend from claim 1 and for the same reason that claim 1 is not shown, taught or made obvious by the references taken singly or in combination, claims 8 and 13 are likewise not shown, taught or made obvious.

In addition, claims 8 and 13 each recite, inter alia, "receiving a request via the Internet for testing from patient Internet apparatus; and **downloading via the Internet said test measurement software** to said subject Internet apparatus." As discussed with respect to claim 1 above, Bardy does not teach either use of or downloading of test measurement software. "Test measurement software" as set forth in claim 1 includes: "providing sensor placement information" and "diagnostic testing operation and operability of said sensors." No such test measurement software is shown, taught or suggested in any of the references.

The Examiner states that Bardy "teaches receiving and downloading requests via Internet" and in support thereof cites col. 7, lines 23-26. However, the cited passage describes only "telemetered signals" and not test measurement software.

Accordingly, for these additional reasons claims 8 and 13 are not shown, taught or made obvious by the references.

Claims 9 and 14 depend from claim 1. For the same reason that claim 1 is not shown, taught or made obvious by the references, claims 9 and 14 are not shown, taught or made obvious. In addition claim 9 depends from claim 8 and claim 14 depends from claim 13, and for the additional

reasons that claims 8 and 13 are not shown, taught or made obvious, claims 9 and 14 are not shown, taught or made obvious by the references.

The Examiner in rejecting claims 9 and 14 states that Bardy teaches "storing measurement software and testing information located proximate to the server" and points to col. 9, lines 53-54. The cited passage speaks only to storing of measured data and not to storage of "test measurement software" as recited in claim 9.

Claim 9 recites, inter alia, "storing said test measurement software in memory located proximate said central server." As noted with respect to claim 1, Bardy is silent on "test measurement software." "Test measurement software" as set forth in claim 1 includes: "providing sensor placement information" and "diagnostic testing operation and operability of said sensors."

Accordingly for this additional reason, claim 9 is not shown, taught or made obvious by the references taken singly or in combination.

Claim 15 depends from claims 1 and 13, and for the same reasons that claims 1 and 13 are not shown, taught or made obvious by the references, claim 15 is likewise not shown, taught or made obvious by the references.

Claim 18 recites, inter alia, "executing a verification routine to determine that said test measurement data appears to be valid data."

Claim 18 depends from claim 1 and for the same reason that claim 1 is not shown, taught or made obvious by the references, claim 18 is likewise not shown, taught or made obvious.

With respect to claim 18, the Examiner states that Bardy teaches "executing a verification routine to determine that the measurement data is valid data" and points to fig. 10b, steps 135 & 136 in support. However, Bardy does not provide any such teaching. Bardy at col. 13, lines 24-27 indicates that Fig 10B is a flow diagram for comparing data for use in the routine of FIG. 8. FIG. 8 is a flow diagram for analyzing collected measures to determine patient wellness. (col. 12, lines 26-31).

It is respectfully submitted that determining that test measurement data appears to be valid data is a distinctly different operation and purpose from utilizing data to determine patient wellness. **Bardy is absolutely silent on determining whether data is valid data**. Accordingly, for this additional reason, claim 18 is not shown, taught or made obvious by the references.

With respect to claims 4, 7, and 19, the Examiner notes that Bardy does not teach receiving requests and determining if the requestor has authorization. The Examiner applies Basso as teaching receiving requests and determining if the requestor has authorization. However, claims 4, 7, and 19 all depend from claim 1 and for the same reason that claim 1 is not shown, taught or made obvious by Bardy, claims 4, 7, and 19 are not shown, taught, or made obvious by Bardy as modified in accordance with the Examiner's suggestion.

Claims 5 and 6 depend from Claim 1 through Claim 4. For the same reasons that Claims 1 and 4 are not anticipated by Bardy, claims 5 and 6 are not anticipated by Bardy alone or in combination with Basso.

Claims 10-12 stand rejected as obvious over Bardy in view of Sugimoto. The Examiner notes that Bardy does not teach "un-installing software after uploading test measurement data" and cites Sugimoto as teaching a processor that uninstalls software after uploading of data.

Claims 10-12 depend from claim 1 and for the same reasons that claim 1 is not shown, taught or made obvious by Bardy, claims 10-12 are not shown taught or made obvious by Bardy modified as suggested by the Examiner. In addition, claim 10 recites "downloading automatic un-install software with said test measurement software, said automatic un-install software being automatically operable to un-install said test measurement software **upon successful uploading of said test measurement data to said central serving apparatus**.

The Examiner is reminded that he must take each reference for what it discloses and teaches within its four corners and that the use of hindsight to modify the teachings of a reference, absent any suggestion in the references to do so is not a proper test of obviousness.

At no place in Bardy is there any suggestion that un-install software is to be used. In fact, because Bardy is directed toward use with implantable medical devices, it is respectfully submitted that there is no logical reason for modifying Bardy as suggested by the Examiner.

Accordingly claims 10-12 are not shown, taught or made obvious by the references taken singly

or in combination.

In view of the foregoing amendment and comments, it is believed that all the claims

presently in the application are in condition for allowance. Reexamination and reconsideration are

requested. It is further requested that the claims be allowed and that this application be passed to

issue. An early notice of allowance would be appreciated.

Respectfully submitted,

DONALD J. LENKSZUS, P.C.

Dated: May 6, 2003   By:_____
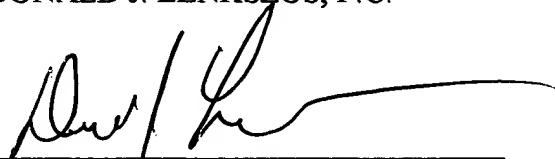
DONALD J. LENKSZUS, Reg. No.28,096
P. O. BOX 3064
CAREFREE, AZ 85377
Telephone: (602) 463-2010

CERTIFICATE OF MAILING BY EXPRESS MAIL
I hereby certify that this document (and any as referred to as being attached or enclosed) is
being mailed by Express Mail No. **EU788250013US** to MS Amendment, Commissioner for
Patents, PO BOX 1450, Alexandria, VA 22313-1450 on **MAY 6, 2003.**
I hereby declare that all statements made herein of my own knowledge are true and that all
statements made on information and belief are believed to be true; and further that these
statements were made with the knowledge that willful false statements and the like so made are
punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States
Code, and that such willful false statements may jeopardize the validity of the application or any
patent issued thereon.
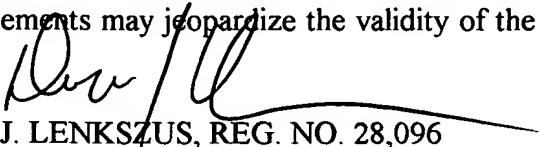
DONALD J. LENKSZUS, REG. NO. 28,096

CHANGES TO CLAIMS 11 AND 12

CLAIM 11. (TWICE AMENDED)   A method in accordance with claim 10, comprising:

automatically un-installing said test measurement software after [unloading] <u>uploading</u>

said test measurement <u>data.</u>

CLAIM 12. (TWICE AMENDED) A method in accordance with claim 8, comprising:

<u>automatically</u> un-installing said test measurement software after uploading said test

measurement <u>data</u>.